

FEB 14 1996

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**BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES, STATE OF UTAH**

IN THE MATTER OF THE FIVE-YEAR)
PERMIT RENEWAL,)
CO-OP MINING COMPANY,)
BEAR CANYON MINE,)
EMERY COUNTY, UTAH)

**MOTION TO STRIKE OBJECTION
TO PERMIT RENEWAL AND
REQUEST FOR INFORMAL
CONFERENCE**

) Docket No. 95-025
) Cause No. ACT/015/025
)

Co-op Mining Company (Co-op) moves the Division to strike the October 12, 1995 Objection to Permit Renewal and Request for Informal Conference filed by Castle Valley Special Service District, North Emery Water Users Association and Huntington-Cleveland Irrigation Company (Petitioners), and to deny the relief Petitioners request in their Objection.

This Motion is based on the grounds Petitioners do not have an interest which is or may be adversely affected by Co-op's permit renewal, so that Petitioners do not have legal standing to object to the permit renewal. This Motion is supported by the following points and authorities.

STATEMENT OF FACTS

1. On July 21, 1994 the Division approved Co-op's Application for Significant Revision to its mining permit, to mine the Tank Seam within its existing permit boundaries.

2. Petitioners appealed the Division's July 21, 1994 decision to the Board of Oil, Gas and Mining. Petitioners claimed mining the Tank seam would harm the quality and quantity of water issuing from Big Bear Spring and Birch Spring.

3. On October 25, 1994 and November 17, 1994 the Board conducted an evidentiary hearing on Petitioners' appeal. On June 13, 1995 the Board issued its Findings of Fact, Conclusions of Law and Order, which included the following:

FINDINGS OF FACT

8. At the evidentiary hearing, the Water Users [Petitioners] presented testimony by certain of its employees and officers concerning the history and development of Birch and Big Bear Springs, and historic flow rates of the springs. The Water Users also presented expert testimony by Mr. Bryce Montgomery, a consulting geologist, about the alleged impacts of Co-op's mining activities on the quantity and quality of flows from the springs, and the geologic mechanisms by which such impacts might occur.

9. Co-op presented evidence in rebuttal by its expert consultants that all water encountered within the Bear Canyon mine was for a variety of reasons hydrological separate from Big Bear and Birch Springs. Co-op's experts also testified that the Tank Seam, the area which it sought to mine pursuant to its application for a Significant Permit Revision, was essentially dry and not in any way linked to the disputed aquifer(s). [Emphasis added]

The Board then made detailed findings regarding the evidence presented:

- 40(c) no direct connection between any water that might in the future be located in the Tank Seam and the ostensible regional aquifer has been established
- 52(a) Tritium analysis establishes that Big Bear spring and water encountered by Co-op during mining are not of the same age, and thus hydrologically distinct;
- 52(b) chemical analysis supports, although it alone does not conclusively establish, the conclusion that Birch spring and the mine water are hydrologically distinct;
- 52(c) the existence of the Blind Canyon fault between the mine and Birch spring would preclude waters encountered in the mine from reaching Birch spring;
- 52(d) Co-op's more-localized hydrologic model supports the conclusion waters encountered in the Bear Canyon mine from perched aquifers and/or the Spring Canyon member of the Star Point sandstone are hydrologically distinct from the springs, which issue from the Panther member of the Star Point sandstone.
[Emphasis added]

4. On or about June 19, 1995, Co-op applied for renewal of its mining permit.

5. On or about October 12, 1995 Petitioners filed their Objections to Permit Renewal and Request for Informal Conference.

6. On November 2, 1995 the Division renewed Co-op's permit.

ARGUMENT

Rule R645-300-122.200 affords a right to object to a permit renewal only to a "person with an interest which is or may be adversely affected." Under Rule R645-100-200, such a person must be one (a) who uses a resource that may be adversely affected, or (b) whose property is or may be adversely affected, by Co-op's coal mining operations.

Petitioners' supposed interest arises solely from their use of the water from Big Bear and Birch Springs. In its June 13, 1995 decision, the Board determined Co-op's permit area is hydrologically isolated from both springs. Since Big Bear Spring and Birch Spring are hydrologically isolated from Co-op's permit area, any mining operations by Co-op pursuant to its permit renewal cannot adversely affect either spring. Because Petitioners do not use a resource that may be adversely affected, and do not have property that may be adversely affected, Petitioners lack standing under R645-300-122.200 to object to the permit renewal. The Division should strike Petitioners' Objection, and deny the relief Petitioners have requested.

DATED this 12 day of February, 1996.


Attorneys for Co-op Mining Company

CERTIFICATE OF SERVICE

I hereby certify on February 12, 1996 I served the foregoing document upon all parties of record by mailing a copy thereof, properly addressed, with postage prepaid, to:

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